

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 921 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?-Yes.
 2. To be referred to the Reporter or not?-No. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
 5. Whether it is to be circulated to the Civil Judge?-No. :

VASUDEV BHAGIRATH SHARMA

Versus

BHATT KAMLASHANKAR HARIVALLABDAS

Appearance:

MR YN OZA for Petitioners

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/04/2000

ORAL JUDGEMENT

#. Present Revision Applicaiton has been filed by the original defendants of Regular Civil Suit No.3 of 1979. Aforesaid suit was filed by the opponent plaintiff herein for getting a decree for possession of the suit premises from the defendants.

2. It is the case of the plaintiff that the suit premises, bearing City Survey No.321, situated in the locality of Gandhiwada of Modasa Town, is of the ownership of the plaintiff. That the suit premises, which is a shop, admeasuring 12 x 12 ft., was given on lease to defendant No.1 at a monthly rent of Rs.31/-. According to the plaintiff, the defendant No.1 was irregular in making payment of rent and that the defendant No.1 has parted with possession of the suit premises to the defendant No.2 and accordingly sub-let the suit premises. The plaintiff served a demand notice for arrears of rent. The defendant No.1 having failed to pay the rent, aforesaid suit was filed by the plaintiff against the defendants on the ground of arrears of rent as well as on the ground of sub-letting as well as for getting possession for the purpose of extension of his own business.

3. The defendants appeared in the suit and filed written statement at Exhibit 11. They denied the suit of the plaintiff. According to the defendant No.1, rent of the suit premises was gradually increased by the plaintiff from time to time. According to the defendants, the standard rent is required to be fixed. The defendants had also, within one month of the receipt of suit notice, taken the dispute of standard rent in reply to the notice. They accordingly denied the suit of the plaintiff.

4. The Trial Court framed various issues arising out of the pleadings of the parties and after recording the evidence on record, dismissed the said suit and the standard rent was fixed at Rs.25/- per month.

5. The aforesaid decree of the trial court was challenged by the plaintiff by filing Civil Appeal No.21 of 1983. The said appeal was heard by the learned District Judge, Sabarkantha at Himatnagar, who, by his order dated 29th March, 1984, allowed the same and the suit of the plaintiff for possession was decreed. The aforesaid order of the appellate court is challenged in the present Revision Application by the original defendants.

6. It is argued by the learned Advocate for the petitioners that the petitioners have taken the dispute of standard rent within one month from the receipt of the suit notice by giving reply to the notice and that, therefore, the appellate court has committed an error of law in coming to the conclusion that no dispute of standard rent was taken within one month from the receipt

of the demand notice. According to the learned Advocate for the petitioners, since the dispute was taken within one month, the case would fall under Section 12(3)(b) of the Bombay Rent Act.

7. Mr.R.N. Shah for the landlord, however, has argued that, no doubt, the dispute of standard rent is taken in reply to the suit notice. However, since no substantive application for disputing the standard rent is filed, and since taking dispute in reply is not enough to bring the case under Section 12(3)(b) of the Act, according to him, the appellate court has rightly come to the conclusion that the case would fall under Section 12(3)(a) of the Bombay Rent Act.

8. As per the provisions of the Act, where the rent is payable by the month and if there is no dispute of standard rent or permitted increase within one month from the receipt of the demand notice, then, the case would naturally fall under Section 12(3)(a) of the Act. However, in the instant case, admittedly, within one month from the receipt of the suit notice, the tenants have taken the dispute of standard rent. It is not the requirement of law that there should be a separate application within one month, raising such dispute of standard rent. Taking dispute in reply to the said notice is also said to be a dispute of standard rent, if such reply is given within one month from the receipt of demand notice. The learned appellate Judge was, therefore, obviously in error in coming to the conclusion that taking the dispute of standard rent in reply to the suit notice is not enough unless substantive standard rent application is filed. In the instant case, the standard rent dispute can, therefore, be said to have been taken within one month in reply to the suit notice, in the written statement the said dispute was taken and finding to that issue was given by the learned Trial Judge, fixing the standard rent at Rs.25/- per month. The appellate court confirmed the said finding in appeal so far as the fixation of standard rent is concerned. In that view of the matter, Section 12(3)(a) can never be said to be applicable in the facts of the present case.

9. The learned Advocate of the petitioners has relied upon the judgment of this Court in Naranbhai Nathabhai Koli v. Modhia Panalal Maganlal, reported in 23(2) G.L.R. 98. In the aforesaid decision, it has been found that even if no separate standard rent application is filed, even if no standard rent dispute is raised within one month and if the dispute is taken for the first time in the written statement and if the rent is

not payable by first month on the ground of taxation liability on the part of the tenant, then, in such case, Section 12(3)(b) will be applicable. In the instant case, however, the dispute of standard rent is taken within one month in reply to the suit notice. What is required to be seen is the taking of standard rent dispute within one month from the receipt of demand notice and not the mode in which the same should be taken. The appellate court had relied upon the judgment of the Honourable Supreme Court in *Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff*, AIR 1968 SC 1109. In the said case, the Supreme Court found that in order to get protection under Section 12(1) of the Act, the tenant must make an application in terms of sub-section (3) of Section 11 of the Bombay Rent Act and the tenant cannot claim protection under Section 12(1) of the Rent Act on the ground that no decree for eviction can be passed against him as he was ready and willing to pay the rent. However, so far as the present case is concerned, the question which is required to be decided is whether Section 12(3)(a) or Section 12(3)(b) of the Rent Act would be applicable. If the tenant has not deposited the rent regularly and on that ground, he cannot get protection of Section 12(3) of the Rent Act is a different thing altogether. But, it cannot be said that simply because no substantive application was filed within one month, provisions of Section 12(3)(b) are not attracted. Aforesaid reasoning of the appellate court, therefore, is contrary to law and the same is required to be set aside.

10. The petitioner has already paid the entire rent on the first date of hearing and it has also been found by the trial court in paragraph 10 of its judgment that at the rate of Rs.31/- per month, the tenant has paid rent regularly in the Court, but subsequently, the standard rent was reduced to Rs.25/- and if the rent is calculated at that rate, there will be excessive deposit of rent. In that view of the matter, the petitioner was entitled to get protection of Section 12(3)(b) of the Act and since the condition of Section 12(3)(b) is complied with, no decree could have been passed under Section 12(3)(a) of the Act. It has not been pointed out by the respondent that there was no regular payment of rent during the pendency of the proceedings either in the trial court or even in the appellate court. In view of what is stated above, the order of the appellate court is required to be set aside and that of the trial court is required to be restored. The suit of the plaintiff for possession shall stand dismissed. Rule is accordingly made absolute, with no order as to costs.

3rd April, 2000 (P.B. Majmudar, J.)

(apj)